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Before the
Federal Communications Commission
Washington, D.C. 20554

JUN 21 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)

Implementation of Sections of the) MM Docket No.

rate regulations. While the Commission's initial Report and Order in this proceeding raises many issues of serious concern to Crown, the comments set forth below discuss only one issue of special concern that was not addressed in the Report and Order. Crown respectfully submits that the FCC should allow cable operators to pass through to subscribers increases in pole attachment costs in excess of inflation without a cost-of-service showing.

Affording pole attachment costs such "external" treatment is consistent with the standard used by the Commission in its Report and Order for deeming certain categories of costs external

operators -- already burdened by the costs of providing basic service -- will make resource consuming cost-of-service showings based in part on this often uncontrollable and exorbitant cost.

II. THE COMMISSION SHOULD CLASSIFY INCREASES IN POLE ATTACHMENT RATES AS EXTERNAL COSTS THAT CABLE OPERATORS MAY PASS THROUGH TO SUBSCRIBERS

A. Treatment of External Costs in the Rate Regulation Order

In its Rate Regulation Order, the Commission identified certain categories of costs -- termed "external costs" -- that cable operators may pass through to subscribers without a cost-of-service showing even when the resulting rates exceed the applicable price cap.⁴ Operators are permitted to pass through increases in these categories of external costs to the extent that they exceed inflation as measured by the GNP fixed weight price index ("GNP-PI").⁵

The FCC deemed certain costs external in order to fulfill statutory requirements in the 1992 Cable Act. For example, the Commission adopted external treatment for retransmission consent fees after October 6, 1994 in response to the Act's directive that the FCC take into account the impact of retransmission consent fees on the cost of basic cable service.⁶

⁴ See Rate Regulation Order at ¶¶ 241-257.

⁵ Id. at ¶ 257.

⁶ Id. at ¶¶ 242-48. See 1992 Cable Act, Section 325(b)(3)(A)(2).

In addition to such statutory requirements, however, the FCC also determined that certain other price changes outside cable operators' control should be permitted to be automatically passed through to subscribers.⁷ These other categories of external costs include costs incurred in obtaining programming, taxes imposed on the provision of cable television service, franchise fees, and the costs of satisfying franchise requirements (including costs incurred for satisfying requirements for local public, educational and governmental access channels).⁸ In classifying these costs as external, the Commission stated that "[t]hese costs are largely beyond the control of the cable operator, and should be passed on to subscribers without a cost-of-service showing."

**B. Increases in Pole Attachment Costs
Should be Deemed External Costs**

Like these categories of costs, pole attachment costs are beyond the control of cable operators and thus should be afforded external treatment. As an initial matter, very few operators own the poles on which their transmission cables are strung. Nonetheless, cable operators usually have no alternative but to

⁷ Rate Regulation Order at ¶¶ 249-54 ("certain price changes caused by factors outside of the cable operator's control should not be deemed price 'increases' subject to the notice requirement, and should be permitted to be automatically passed-through without prior regulatory review."); Notice of Proposed Rule Making in Docket 92-266, 8 FCC Rcd 510, 529 (1992) ("Notice") (same).

⁸ Rate Regulation Order at ¶¶ 249-54.

use available space on existing utility poles.⁹ Given the large size of most utilities and their almost exclusive control of poles, utilities are in a position to extract exorbitant rental fees from cable operators.

Moreover, pole attachment costs have increased at an annual rate exceeding the rate of inflation. For example, in November of 1992, the City of Kirkwood, Missouri Electric Department notified a Crown entity that the annual pole rental fee was going to be increased, retroactively from July 1992, from \$5.00 per pole to \$7.19 per pole -- an increase of almost 43 per cent. This increase far exceeds the 3.0 per cent rate of inflation for the same period. Similarly, in 1992 the Clarksville, Tennessee Department of Electricity raised its pole rental fees 35 per cent, from \$9.25 per pole to \$12.50 per pole. In terms of rate increases, pole attachment fees are no different than programming costs, which the Commission has classified as external costs based in part on the fact that programming costs have increased at a rate far exceeding inflation.¹⁰

⁹ See, e.g., Senate Report at 13.

¹⁰ Rate Regulation Order at ¶ 251.

**III. THE POLE ATTACHMENTS ACT DOES NOT ADEQUATELY
PROTECT CABLE OPERATORS FROM UNREASONABLE
INCREASES IN POLE ATTACHMENT RATES**

In response to the excessive pole rental fees charged by utilities, Congress enacted the Pole Attachments Act in 1978.¹¹ The Act provides a means by which a cable operator may file a complaint against a utility that charges unjust or unreasonable pole attachment fees.¹² Despite the Act's salutary intent, however, it has proven to be ineffective in many instances because a substantial number of utilities are exempt from its provisions and because federal and state processing of operators' complaints has been lax.

Significantly, the Pole Attachments Act and the FCC's regulations exclude from pole rental regulation poles owned or operated by governmental entities, co-ops and railroads.¹³ The pole attachment rates charged cable operators by such entities are beyond the reach of regulation and the utilities continue to abuse their superior bargaining power. The rate increases discussed above, imposed on cable operators by utilities owned and operated by governmental entities, are not atypical.

Furthermore, under the Pole Attachments Act the Commission lacks jurisdiction to settle cable operators' pole rental

¹¹ Pub. L. No. 95-234, § 6, 92 Stat. 33, 35 (1978), codified at 47 U.S.C. § 224 (1988).

¹² 47 U.S.C. § 224(b) (1988); 47 C.F.R. § 1.1404 (1992).

¹³ See 47 U.S.C. § 224(a)(1) (1988); 47 C.F.R. § 1.1402(a) (1992). See also Senate Report at 18.

complaints where a state has certified to the FCC that it regulates pole attachment agreements.¹⁴ This provision of the Act has precluded FCC review of state determinations of operators' complaints. Indeed, the Commission will not even evaluate the adequacy of the state's regulatory scheme for pole attachments.¹⁵ The result has been uneven and in some cases unacceptable resolution of cable operators' pole attachment rate

The Pole Attachments Act has thus largely failed to ameliorate the monopolistic practices of utility pole owners. Many unregulated utilities continue to abuse their superior bargaining by demanding exorbitant pole attachment fees. Even worse, utilities that are subject to federal and state regulation have been emboldened by less than expeditious processing of complaints. In sum, pole attachment rate increases remain beyond the control of cable operators.

IV. OPERATORS ARE MORE LIKELY TO MAKE COST-OF-SERVICE SHOWINGS IF POLE ATTACHMENT COSTS ARE NOT DEEMED TO BE EXTERNAL COSTS

Crown assumes it is axiomatic that cable operators should not be encouraged to make cost-of-service showings to justify increases in pole attachment costs. When pole attachment costs are added to the many other costs of providing basic service, however, this is precisely what may occur. The Commission has articulated a clear policy that cost-of-service ratemaking is to be used only as a "safety net."¹⁸ Indeed, such a process will consume vast amounts of Commission and cable operator resources. Disallowing operators from passing through pole attachment cost increases in excess of inflation has the unfortunate effect of making cost-of-service showings more likely. At a time when grave doubts have been cast on the Commission's ability to

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¹⁸ See, e.g., Notice, 8 FCC Rcd at 524-525.

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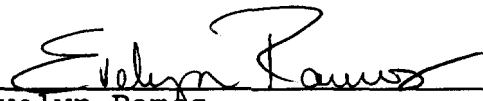
I hereby certify that on this 21st day of June, 1993, I caused copies of the foregoing "Petition For Reconsideration" to be hand-delivered to the following:

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